

**SUPPLEMENTAL McNAMARA DECLARATION**  
**EXHIBIT 15**

Benjamin H. Saracco

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

- - -

HACHETTE BOOK GROUP, INC., : Civil Action  
ET AL, : No. 1:20-cv-04160-JGK  
:  
Plaintiffs, :  
:  
vs. :  
:  
INTERNET ARCHIVE, ET AL, :  
:  
Defendants. :

- - -

TUESDAY, MARCH 15, 2022

- - -

Remote Zoom Videotaped Deposition of  
BENJAMIN H. SARACCO, taken pursuant to Notice,  
in New Jersey, commencing at approximately  
11:06 a.m., on the above date, before Rose A.  
Tamburri, RPR, CM, CCR, CRR, USCRA Speed and  
Accuracy Champion and Notary Public.

- - -

1 library was closed, I already knew as a matter  
2 of fact through regular, you know, going to  
3 work every day and fielding questions in  
4 emails that the BLS and ACLS manuals, for  
5 whatever reason decided by my library's  
6 administration, were made available through  
7 physical copies.

8 MR. BROWNING: Understood.

9 Bill, could you put up Tab 11,  
10 please.

11 (Whereupon, a document was marked,  
12 for identification purposes, as Saracco  
13 Exhibit 11.)

14 MR. BROWNING: And let me know  
15 when you can see this.

16 THE WITNESS: I have it.

17 BY MR. BROWNING:

18 Q. So this is Saracco Exhibit 11, I'm  
19 going to represent to you, is a web page I  
20 accessed, either yesterday or the day before,  
21 on the American Heart Association's website.  
22 It says, "ACLS Provider Manual eBook."

23 I am going to represent to you,  
24 Ben, this is an eBook version of the Advanced  
25 Cardiovascular Life Support book. My question

1 is this:

2 Have you ever seen this web page  
3 before?

4 A. I don't ever recall ever seeing this  
5 exact web -- this exact web page.

6 Q. If you had seen -- sorry, go ahead.  
7 I didn't mean to interrupt you.

8 A. No, that was all.

9 Q. Okay.

10 And I am going to represent to you  
11 that this is a page through which you can  
12 purchase a version of the -- the ACLS manual  
13 eBook.

14 Do you have any reason to doubt  
15 that?

16 A. No. And I will amend my previous  
17 testimony. So before I was right when I said  
18 it was the American Heart Association, so that  
19 makes me think that maybe in some time past, I  
20 had seen this website and -- because how else  
21 would I -- well, I could have seen the cover  
22 of a book also that would let me know that,  
23 but I just want to be fair that I don't want  
24 to make that statement.

25 Q. Yeah.

1           A.     Make -- that there's -- there's  
2     possibility -- I mean, I visit hundreds of  
3     websites a day for books when I search for a  
4     book, and it's possible I've seen this website  
5     before.

6           Q.     Totally -- totally understood.

7                     But, I mean, I guess -- I guess  
8     what I'm getting at is, at the time we were  
9     discussing when you directed patrons or  
10    students to the Internet Archive, to the best  
11    of your recollection, as you sit here today,  
12    you were not available -- you were not aware  
13    that the ACLS provider manual was available as  
14    an eBook; is that right?

15          A.     You broke up a bit there. I was not  
16    aware that what?

17          Q.     That this ACLS provider manual was  
18    available as an eBook?

19          A.     Well, it wasn't available as eBook on  
20    the platform that we had.

21          Q.     Yep.

22                     But do you ever -- and I am not --  
23    I don't mean you, personally, here, but are  
24    there ever times where people who are  
25    authorized to talk with publishers to see if

1 they can get preferential access to eBooks or  
2 licensed eBooks?

3 A. Preferential access? I'm not sure  
4 what that means.

5 Q. Strike that. That's a terrible  
6 question.

7 Are there ever times where people  
8 who are not you, but representatives of the  
9 library, negotiate with publishers for eBooks?

10 A. They negotiate for platforms that  
11 contain eBooks.

12 Q. Okay.

13 A. And it's possible in one of those  
14 platforms -- a lot of times, these eBooks are  
15 in packages or bundles. Again, this is not my  
16 area of professional duties, so I can't really  
17 speak as to how that works and how they --  
18 they do that.

19 But yes, they certainly subscribe  
20 to platforms that might make it available.  
21 You know, sometimes vendors -- I mean, we have  
22 6 to 8,000 employees at Cooper Health, you  
23 know, 20,000 student enrollment at Rowan  
24 University, not counting any -- any of the  
25 staff. There's a lot of factors that go into

1       whether a vendor would even want to make  
2       materials available to you sometimes.    So  
3       again, it's not my area of expertise.

4           Q.     Sure.

5           A.     But, yeah.

6           Q.     But to the best of your knowledge,  
7       nobody at Rowan University reached out to the  
8       American Heart Association while your library  
9       was closed down to ask for free copies of the  
10      eBook?

11          A.     For free copies?

12          Q.     Correct.

13                   MS. LEE:   Objection to form.

14                   THE WITNESS:  I'm sorry, could you  
15       repeat the question?  I didn't hear part of  
16       it.

17                   MR. BROWNING:  Sure.  So let me --  
18       let me preface with another representation.

19       BY MR. BROWNING:

20          Q.     Are you aware that during the  
21       pandemic, certain publishers offered either  
22       free or discounted copies of eBooks to cover  
23       for books that were -- physical books that  
24       were unavailable?

25          A.     EBooks, no, I'm not familiar with it.

1 I know some of the databases made, like, free  
2 access for a period of time. I can't tell you  
3 a specific example, but I sort of vaguely  
4 remember a couple of databases doing that.

5 Q. So I guess the question I was asking  
6 is, are you aware of anyone from Rowan  
7 University contacting the American Heart  
8 Association and asking for free or discounted  
9 copies of the ACLS provider manual eBook to  
10 replace the locked-down physical copies?

11 A. During COVID, did anybody reach out  
12 to them and ask for free copies?

13 Q. Right.

14 A. No. I -- I -- I -- I certainly  
15 didn't and I don't know of anyone else that  
16 did that. And I think that that would be not  
17 standard practice. I think it's, you know,  
18 publishers -- I -- I don't think that that  
19 would be standard practice, just asking for  
20 free things from publishers.

21 Q. Okay.

22 MR. BROWNING: And, Bill, could  
23 you put on Tab 13B. It's a spreadsheet.

24 (Whereupon, a document was marked,  
25 for identification purposes, as Saracco

C E R T I F I C A T E

I do hereby certify that I am a Notary Public in good standing, that the aforesaid testimony was taken before me, pursuant to notice, at the time and place indicated; that said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but the truth; that the testimony of said deponent was correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the deposition is a true and correct record of the testimony given by the witness; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS by hand and official seal  
this 15th day of March, 2022.



Notary Public

Job No. MW5127536